




**North Carolina Department of Commerce
Division of Workforce Solutions**

DWS Policy Statement Number: PS 19-2017, Change 2

Date: July 29, 2019

**Subject: Requirement for Local Workforce Development
Boards to Use Competitive Selection Processes to
Procure Training Providers and One-Stop Operators**

From:


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Assistant Secretary for Workforce

Purpose: To inform local Workforce Development Boards (WDBs) of the requirement that they must use a competitive procurement process to select providers of Workforce Innovation and Opportunity Act (WIOA) Adult, Youth, and Dislocated Worker services, as well as, for the operator of a local certified NCWorks Career Center using the Workforce Innovation and Opportunity Act (WIOA) Final Regulations and to allow the one-stop operator selection process to remain up to four (4) years.

To provide instructions for a waiver in the case of a failed procurement process.

To rescind PS 19-2017, Change 1.

Background: Adult, Youth, and Dislocated Worker Training Services: Section 107(g)(1)(A) of WIOA mandates that local WDBs shall not provide training services to customers. This requirement is reiterated in 20 Code of Federal Regulations (CFR) Final Rule §679.410(b). A local WDB acting as a direct provider of services is not optimal, as the local WDB is designed to oversee the one-stop system and its services, not provide them. WDBs must competitively procure these training services in compliance with all state and federal regulations. Section 107(g)(1)(B) of WIOA provides limited authority to waive these procurement requirements (see attachment).

One-Stop Operators: Requirements for the competitive procurement of one-stop operators are set forth in 20 CFR §678.605, which requires the one-stop operator to be selected through a competitive process. Although applicable regulations allow a local WDB to be the one-stop operator in limited circumstances, the Division of Workforce Solutions (DWS) opposes such an arrangement because the WDB's principal role is to provide strategic direction and oversight to service delivery.

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Section 121(d)(2)(A) of WIOA and 20 CFR §678.605(a) require the one-stop operator to be selected through a competitive process at least once every four (4) years. DWS will allow this procurement interval as an exception to the other sub-recipient contracts governed by *DWS Policy Statement 21-2017: Procurement and Contracting Policy* (PS 21-2017). Please note that the State of North Carolina cannot enter into four-year contracts even under this circumstance. In addition, the local Board may enter into a four-year contract, if and only if, the local Financial Management/Procurement Policy allows for four-year contracts for the One-Stop Operator.

Applicable regulations (20 CFR §678.615) also allow a one-stop operator to be a service provider so long as there are proper internal controls and firewalls in place to ensure that the entity's dual roles as operator and service provider do not conflict. To guard against possible conflicts of interests, these internal controls and firewalls must ensure that the operator is not overseeing itself as a service provider. There must be firewalls in place to ensure that the operator is not conducting oversight of itself as a service provider.

Extreme care should be taken to ensure that Local WDBs continue to provide strategic direction and maintain an arm's length relationship in the day-to-day delivery of services to Career Center customers.

Action: Adult, Youth, and Dislocated Worker Training Services: Each local WDB must competitively procure Adult, Youth, and Dislocated Worker services and maintain a very clear and distinct firewall between the WDB and the services delivered to customers.

If the competitive procurement process fails, the WDB may seek other non-competitive options for the first year or request a waiver to allow it to provide training services directly to customers. All waiver requests must comply with the attached Waiver of Training Prohibition guidelines and be submitted to the WDB's DWS Planner within thirty (30) days of the failed procurement.

One-Stop Operators: Operators of certified NCWorks Career Centers must be competitively procured at least once every four (4) years. This extended service period is an allowed exception to the requirements regarding contract terms set forth in Attachment 1 to PS 21-2017 Procurement and Contracting Policy Statement General Contractor Provisions for All Contracts/Contract Period.

Local WDBs must follow all applicable federal, state, and local procurement requirements (with the exception of the extended procurement interval/service period discussed above) in selecting service providers and one-stop operators to deliver services funded by WIOA resources. Federal requirements include, but are not limited to:

- 1) Sections 200.317 through 200.326 of 2 CFR Part 200 (the United States Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards); (Procurement Procedures) which establishes principles and standards for determining costs for all federal awards carried out by state and local governments;
- 2) 20 CFR Sections 678.605(a) and 678.610; and
- 3) DWS PS 21-2017 - North Carolina Division of Workforce Solutions' Procurement and Contracting Policy Statement.

DWS will provide oversight of compliance through:

- 1) reviewing the Local Area Plan responses outlining procurement procedures;
- 2) monitoring activities including direct site visits; and
- 3) oversight summary reports.

Effective Date: Immediately

Expiration: Indefinite

Contact: DWS Planners
DWS Fiscal Monitors

Attachment 1: Waiver of Training Prohibition

Waiver of Training Prohibition

The Workforce Innovation and Opportunity Act (WIOA) section 107(g)(1)(A) indicates that local Workforce Development Boards (WDBs) may not provide training services to customers. The Act does, however, allow an opportunity for a waiver of this provision.

Any local WDB that wishes to directly provide training services to customers through its staff or through the staff of the local WIOA administrative entity/grant recipient or experiences a failed competitive selection process must submit a waiver request to the Division of Workforce Solutions (DWS) that contains the following:

- (I) based upon a failed competitive procurement, satisfactory evidence that there is an insufficient number of eligible providers of such a program of training services to meet local demand in the local area;
- (II) information demonstrating that the WDB meets the requirements for an eligible provider of training services under WIOA section 122;
- (III) information demonstrating that the program of training services prepares participants for an in-demand industry sector or occupation in the local area; and
- (IV) a description of the clear and distinct firewall between the WDB and the services delivered to customers.

The local WDB must make the proposed waiver request available to eligible providers of training services and other interested members of the public for a public comment period of not less than 30 days. The final request for the waiver must also include the evidence and information described in the list I – IV above, as well as the comments received during the public comment period.

Duration: A waiver granted to a local WDB shall apply for a period that shall not exceed one year. The waiver may be renewed for additional periods based upon evidence submitted to the DWS, but only if the local WDB continues to meet the requirements of the provisions stated above.

Revocation: The DWS shall have the authority to revoke the waiver during the appropriate period described in the preceding paragraph if it determines the waiver is no longer needed, the local WDB involved has engaged in a pattern of inappropriate referrals to training services operated by the local WDB, or there were irregularities in the competitive procurement process.